

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DAVID KENT FITCH	\$	
VS.	\$	CIVIL ACTION NO. 1:05cv256
G.D. ADAMS, ET AL	\$	

MEMORANDUM ORDER PARTIALLY ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

David Kent Fitch, proceeding *pro se*, filed the above-styled lawsuit.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends the lawsuit be dismissed as repetitious of another lawsuit filed by plaintiff.

Plaintiff filed correspondence in response to the Report and Recommendation. Plaintiff did not object to the lawsuit being dismissed, but did not believe the case was repetitious. Plaintiff states the complaint he filed in this case was intended to be an amended complaint to be filed in his other case.

ORDER

In light of plaintiff's response, the report of the magistrate judge is **PARTIALLY ADOPTED** insofar as it recommends dismissing this

lawsuit. However, the final judgment will recite that the case is being dismissed without prejudice as improvidently filed. If plaintiff deems such action appropriate, he may resubmit his complaint as an amended pleading in his other case.

So **ORDERED** and **SIGNED** this **24** day of **May, 2005**.

A handwritten signature in cursive script, appearing to read "Ron Clark".

Ron Clark, United States District Judge